

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 CAPITOL MALL, 17TH FLOOR
SACRAMENTO, CALIFORNIA 95814

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

**RH – 01-017313
DECEMBER 28, 2001**

COMMISSIONER'S REPORT ON UNDERSERVED COMMUNITIES

SUBJECT OF HEARING

Insurance Commissioner Harry W. Low is considering amendments to Title 10, Chapter 5, Subchapter 4.8, Article 6, of the California Code of Regulations, Sections 2646.6 through 2646.11, inclusive. Commissioner Low will conduct a rulemaking hearing to gather and make available to the public, information and public comment concerning the affordability and availability of insurance products in Underserved Communities.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes to adopt these regulations pursuant to the authority of Insurance Code Sections 1861.03, 12921 and 12926 and under the authority of the Insurance Commissioner to regulate the insurance market in California in an orderly manner as set forth in *Calfarm Insurance Company v. Deukmejian*, 48 Cal.3d 805.

The purpose of the regulations is to implement, interpret, and make specific provisions of Insurance Code Sections 1861.03.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the provisions of this statute and these regulations, at the following dates, times and locations:

Date: Friday, February 22, 2002
Time: 10:00 am
Location: California Department of Insurance
45 Fremont Street, 22nd Floor Hearing Room
San Francisco, CA 94105

Date: Thursday, February 28, 2002
Time: 10:00 am
Location: California Department of Insurance
Ground Floor Hearing Room
Ronald Reagan State Office Building
300 South Spring Street
Los Angeles, CA 90013

The hearing will continue on the dates noted until all testimony has been completed or 4:00pm, whichever is earlier.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner on the proposed regulations. General or substantive inquiries may be addressed to:

Natasha R. Ray, Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

or

Ben Gentile, Chief
Statistical Analysis Bureau
300 So. Spring Street, 14th floor
Los Angeles, CA 90013
(213) 346-6316

All written materials, unless submitted at the hearings, must be received by the Insurance Commissioner, at the address listed above, no later than 4:30pm on Thursday, February 28, 2002. Unless leave is given at the hearing, any written materials received after that time will not be considered.

All persons are all invited to present oral and/or written testimony at the scheduled public hearing.

Comments may be sent via electronic mail to Natasha R. Ray, Senior Staff Counsel at rayn@insurance.ca.gov.

ADVOCACY OR WITNESS FEES

Eligible persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees and other reasonable expenses, in accordance with the provisions of Title 10 of the California code of Regulations Sections 2661.1 *et seq.*, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address in order to inquire about the appropriate procedures:

Office of the Public Advisor
California Department of Insurance
300 Capitol Mall, 17th floor
Sacramento, California 95814
(916) 492-3559

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Commissioner proposes the adoption of Title 10, Chapter 5, Subchapter 3, Article 2.5, Sections 2293 through 2299. The purpose of these regulations is to implement, interpret and make specific provisions of the California Insurance Code, including but not limited to, Sections 13810 et. seq. These regulations will establish definitions for critical terms used throughout the statutes and will set forth guidelines for the gathering and reporting of the information and records required therein.

SUMMARY OF EXISTING LAW

Existing law requires an insurer doing business in this state to provide certain data to the Department regarding the types and amounts of policies sold in Underserved Communities.

Existing law provides that carriers writing in excess of ten million dollars (\$10,000,000.00) in private passenger automobile policies (excluding policies issued through the California Automobile Assigned Risk Plan (CAARP), homeowners' multiple-peril (excluding policies issued through the California Fair Access to Insurance Requirements (FAIR) Plan) commercial automobile policies having an annual premium in excess of \$7500.00; commercial multiple-peril policies having an annual premium in excess of \$7500.00, fire (excluding policies issued through the California FAIR Plan and liability other than automobile coverages, shall provide data regarding premiums and the total number of exposures new, exposures canceled and exposures non-renewed by ZIP code.

Existing law further provides that carriers shall provide data detailing the number of independent, employed or captive agents or agencies and the number of employed or independent claims adjusters maintaining offices by ZIP code.

Existing law requires that insurance carriers writing the covered lines of insurance shall request that applicants in Underserved Communities provide information to the Department on the type of coverage applied for, as well as the applicant's Race, National Origin and Gender, and that carriers shall provide this information to the Department on a separate, detachable form that carriers no information that identifies the applicant, other than the applicant's ZIP code.

Existing law provides that the Commissioner shall find that a community is Underserved if one of three conditions is met and further, that any insurer that denies insurance to an applicant in an Underserved Community shall issue a written declination to the applicant and shall maintain declination files for 5 years.

Existing law further provides that the Commissioner shall issue an annual Report on Underserved Communities, by carrier, detailing the number and percentage of total exposures the

company has in force in Underserved Communities and in all other communities, stated separately, by line as well as the number and percentage of offices maintained in the Underserved Communities and in all other communities.

Existing law provides that *in lieu* of the described data, carriers may submit either Strategic Plans for Underserved Communities (Plans) or Evidence Demonstrating an Existing Presence in Underserved Communities (Evidence) as well as timelines for public notice of the submission of Plans or Evidence and timelines for the Commissioner's review and acceptance or rejection of Plans or Evidence. Existing law further provides for consumer participation in the Commissioner's Decision to accept or reject a Plan or Evidence.

The Commissioner now proposes the adoption of these regulations as follows:

STATEMENT OF SPECIFIC PURPOSE

The effect of the specific proposed regulations is as follows:

Amended Section 2646.6(a)

The effect of the proposed amendment to this regulation would be to remove certain limitations on which carriers must report the specified data as well as remove limitations on the types and amounts of policies which carriers must report. Currently, these limitations have the effect of eliminating approximately 45% of all statistically significant data that otherwise would be reported to the Commissioner, which detrimentally affects the impact and usefulness of the required data. This proposed new section would require all insurance companies to provide the required data for all affected lines of insurance, except umbrella, excess or reinsurance coverages.

Amended Section 2646.6(b)

The effect of the proposed amendment to this regulation would be to require that carriers provide written premium, as well as earned premium for specified coverages to the Department. This amended section would eliminate the requirement that carriers provide data for private passenger automobile physical damage; commercial automobile liability; commercial automobile physical damage and liability other than automobile coverages. This amended section would require private passenger automobile liability carriers to provide information on policies issued through CAARP and would require the FAIR Plan to report data on policies issued pursuant to the FAIR Plan. This amended section would also require carriers writing commercial multiple peril coverages to report data for policies having an annual premium in excess of \$7500.00.

This amended section would eliminate the requirement that carriers report data on the number of employed or captive agents and their employed or independent claims adjusters and instead, would require insurers to provide information on the number of agencies, by ZIP code.. This amended section would specify the languages to be reported for agents speaking languages other than English.

This section would provide that the carriers may access and download a form for gathering the requested Race, National Origin and Gender (RNOG) from the Department's website.

This amended section would eliminate the requirement that carriers provide data on the number of application received on a "by line" basis, as well as data detailing the number of declinations issued.

Amended Section 2646.6(c)

The amendment to this section will eliminate one of the three existing criterion by which the commissioner may determine that a community is underserved: "members of the community have contacted three or more agents or companies directly and have been declined for insurance for which they were ready, willing, able and qualified to purchase", as well as the Commissioner's option to rely on "reports of insurers, agents, brokers, policyholders, applicants, or consumers" in making the determination that a community is underserved.

Amended Section 2646.6(d)

The effect of this amended section is to eliminate the requirement that insurers declining coverages to applicants in Underserved Communities must issue and retain copies of letters of declination.

Amended Section 2646.6(e)

This amended section would eliminate the reference to offices, as those provisions have been deleted. This amended section also eliminates the requirement that direct writers provide information regarding number and percentage of direct mail and telephone solicitations in Underserved Communities.

Amended Section 2646.6(f)

The effect of this amended section is to specify that failure to comply with the requirements of this regulation will subject the carrier to a hearing pursuant to California Insurance Code Section 1861.08.

Amended Section 2646.7

The effect of this amended section would be to delete the provision which allows carriers to submit Strategic Plans *in lieu* of the data required pursuant to Section 2646.6.

Amended Section 2646.8

The effect of this amended section would be to delete the provision that allows carriers to submit Evidence Demonstrating an Existing Presence in Underserved Communities *in lieu* of the data required pursuant to Section 2646.6.

Amended Section 2646.9

The effect of this amended section would be to eliminate the provision for Consumer Participation in the Commissioner's decision to accept or reject a Plan or Evidence.

Amended Section 2646.10

The effect of this amended section would be to delete the provision setting forth the timelines for the Commissioner's review of Plans and Evidence.

Amended Section 2646.11

The effect of this amended section would be to delete the provision regarding remedial action to be taken against carriers that fail to comply with Section 2646.7 or Section 2646.8.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AND LOCAL GOVERNMENT / FEDERAL FUNDING

The Commissioner has determined that there will be no direct cost or savings to, nor will there be any new program mandates on, any local agency, state agency or school district from the proposal, and that the proposal will not affect federal funding to the State. The proposed regulations will not affect small businesses because insurance companies are by definition not small businesses.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by him, or that has otherwise been identified and brought to his attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON HOUSING COSTS

The matters proposed herein will not effect housing costs.

ECONOMIC IMPACT ON BUSINESS AND INDIVIDUALS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposal will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. To the extent the proposed regulations will have an impact on the cost of private persons or businesses directly effected, the cost impact is as a result of the Insurance Code sections being implemented, interpreted or made specific by the proposed regulations. The Commissioner invites interested parties to comment on this issue.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner believes that the proposed regulations will have no impact on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and/or the expansion of businesses currently operating in California. To the extent the proposed regulations will have an effect on the creation, elimination, and expansion of businesses and jobs, the impact is as a result of the Insurance Code sections being implemented, interpreted or made specific by the proposed regulations. The Commissioner invites interested parties to comment on this issue.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner believes that the proposed regulations will not have a significant cost impact on private persons or businesses directly affected by them. To the extent that the proposed regulations do have an impact on the cost of private persons or businesses directly affected, the cost impact is a result of the Insurance Code sections being implemented, interpreted or made specific by the proposed regulations. The Commissioner invites all interested parties to comment on this issue.

IMPACT ON SMALL BUSINESSES

There is no adverse impact on small businesses. This regulation impacts insurance companies, which are not small businesses.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposal will not impose any non-discretionary cost or savings on local agencies.

COSTS OR SAVINGS TO STATE AGENCIES

The proposal will not result in any cost or significant savings to state agencies.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commenting with Section 17500) of Division 4 of the Government Code would require reimbursement.

IMPACT ON COMPETITIVENESS

The proposal will not have an adverse impact on competition or competitiveness.

PLAIN ENGLISH

The proposal is in plain English except to the extent that technical terms could not be avoided. Those technical terms are defined in plain English.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

IMPACT ON HOUSING COSTS

The proposal will not affect housing costs.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an "Initial Statement of Reasons" which sets forth the reasons for these regulations. The Initial Statement of Reasons, together with the text of the proposed regulations, and this Notice of Proposed Action are available for inspection or will be provided at no charge upon request to the contact person listed above.

ACCESS TO COPIES OF PROPOSED REGULATIONS AND STATEMENTS OF REASONS

Any interested person may inspect a copy or direct questions about the proposed regulations, the statement of reasons therefor, the information upon which the proposal is based, and any supplemental information, contained in the rulemaking file, from the contact person listed above. Upon prior request, the rulemaking file is available for inspection at 300 Capitol Mall, 17th floor, Sacramento, CA 95814 between the hours of 9:00 am and 4:30 pm, Monday through Friday. This notice, the proposed regulations and statement of reasons is available on the Department's website at www.insurance.ca.gov. The Final Statement of Reasons, once it has been prepared, may be obtained from Natasha R. Ray, Senior Staff Counsel. Ms. Ray's contact information is listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's mailing list.

MODIFIED LANGUAGE

If the regulation adopted by the Department differs from, but is sufficiently related to, the action proposed, it will be available to the public for at least 15 days prior to the date of adoption.

Dated: December 18, 2001

HARRY W. LOW, Insurance Commissioner

By: _____
Natasha R. Ray
Senior Staff Counsel#70972 v5